
CITY OF PHILADELPHIA

POLICE ADVISORY COMMISSION

PPD POLICY TRANSLATION FOR PUBLIC REVIEW



Title: Arbitration	Type of Report: <input checked="checked" type="checkbox"/> Final <input type="checkbox"/> Supplemental
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Arbitration is a form of alternative dispute resolution that allows opposing parties to resolve conflict outside of the formal legal system. An arbitration hearing is like a trial in that each side presents their case by introducing evidence, calling witnesses, and giving opening and closing arguments, but the hearing is presided over by one or more designated arbitrators instead of a judge, and arbitrations typically take place in a setting less formal than a courtroom. The PPD uses two different types of arbitration: interest arbitration and grievance arbitration, which are described below. State law requires that disputes between the Fraternal Order of Police (FOP) and the City must be submitted to arbitration.

Interest Arbitration

Every few years, depending on the terms of the previous agreement, the collective bargaining agreement (CBA) between the FOP and the City of Philadelphia is renegotiated. This is done through a process called interest arbitration, which is a way to resolve disputes during contract negotiation. In this process, three arbitrators (one chosen by the City, one chosen by the FOP, and one mutually-agreed upon neutral third-party) hear proposals from the City and from the FOP regarding their desired changes to the CBA. The arbitrators then decide on what aspects of the proposals to include and the neutral arbitrator writes the amendments to the CBA.

Grievance Arbitration

The other type of arbitration is grievance arbitration. Grievance arbitration occurs when an officer believes the terms of the CBA have been violated, or when an officer receives discipline and wishes to appeal it through the grievance process. The rules that govern this process are laid out within the CBA. Many police departments around the country use grievance arbitration as the final level of appeal within the disciplinary process, but depending on local labor agreements, the details of the process can vary greatly. This document focuses on the grievance arbitration process, specifically as it pertains to the disciplinary process for PPD officers. To shed light on how PPD officers appeal discipline and how a related arbitration works, the steps of the process are listed below.

1. Internal PPD Review

The FOP contract lays out a multi-step discipline appeal process that leads up to arbitration. The first step is commonly referred to a “step one meeting” or “first step meeting.” These first step meetings occur approximately once a month and are attended by representatives from the PPD Labor Relations Unit (PPD LRU), the PPD Deputy Commissioner of Organizational Services, and FOP representatives. The attendees discuss any new grievances, including discipline grievances, that have been filed since the last meeting and negotiate to resolve them. For example, the attendees may agree to shorten an officer’s suspension and prevent the need for the grievance to continue through the process. If the parties can resolve the grievance in this meeting, the PPD LRU will contact the officer’s command with the settlement information and ensure the Department records are changed accordingly. If the parties cannot resolve the grievance in the first step meeting, the officer and the FOP can choose to drop the grievance or proceed to another level of appeal.

2. External City Agency Review

The contract notes that if the officer wishes to continue with an appeal after the first step meeting, an external review can be conducted by either the Managing Director's Officer or the Mayor's Office of Labor Relations.¹ This review results in a meeting or hearing and a written decision regarding the discipline. In practice, this external review is omitted, and the union makes a demand for arbitration after a first step meeting. This external review, however, remains an option as delineated in the CBA.

3. Demand for Arbitration

If the grievance is not settled after the previous levels of review, the FOP sends a formal notification that it intends to have the case arbitrated, known as the arbitration demand. The FOP sends the demand to the local office of the American Arbitration Association (AAA), the organization that coordinates arbitrations for the City, and copies the MOLR. The MOLR is the City's manager for the labor grievance process and works with all City-affiliated labor groups. Once the arbitration demand is made, the parties begin to prepare for the arbitration hearing but can decide to settle the grievance at any time until an arbitration hearing is concluded and the arbitration award is issued.

Selection of Arbitrator and Preparation

AAA maintains a pool of neutral arbitrators who must have business experience or have practiced law related to the labor industry, among other requirements. Upon receiving notification of a new arbitration demand, AAA generates a list of approximately 10 potential arbitrators and sends the list, along with the arbitrators' personal biographies and prices, to the MOLR and the FOP. Each party then strikes names of the arbitrators whom they do not want and rank the remaining names in order of preference. Once the MOLR and the FOP return their strike lists to AAA, AAA selects the highest ranked arbitrator remaining on the lists and sends that arbitrator's available dates to MOLR and the FOP. If there is no match from the lists, AAA sends the parties a second list, but the parties cannot strike names, only rank them. Once an arbitrator is chosen, the parties correspond with the arbitrator to schedule a hearing date. The Labor and Employment Unit of the City's Law Department (LEU) assigns a City attorney to the case to represent the City at the arbitration hearing, and they work with the MOLR and the Police Department to prepare.

The PPD LRU sends all relevant PPD documents to the assigned LEU attorney at least 90 days before the arbitration hearing is scheduled to occur. If Internal Affairs (IAD) did the investigation, these documents include a coversheet memo about the investigation that summarizes the facts of the case, the salient points of the statements and the findings of the allegations. Investigations can also be done at the District level for complaints brought from within the Department, for violations such as insubordination. The LEU attorney also receives the full investigative file (typically accompanied by a table of contents), along with the audio recording of the PPD disciplinary hearing, if one was held, video footage of the incident if it is available, and other relevant PPD documents, which can include patrol logs, assignment sheets, and the disciplinary history, personnel file, and performance reports for the involved officer.

The Arbitration Hearing

At the arbitration hearing, the PPD officer and their FOP representative present their opening arguments, witnesses, and evidence, as does the City's representative. An arbitration hearing lasts as long as it takes for both parties to present their cases. The parties can deliver their closing arguments orally at the hearing or deliver them in writing to the arbitrator. Once the closing arguments are delivered, the arbitrator has thirty days to deliver their decision in a written arbitration award.

An arbitration award can deny the grievance, meaning that the arbitrator upheld the original disciplinary decision, sustain the grievance, meaning that the arbitrator found the original discipline to be inappropriate, or sustain it in part and deny it in part (a "split decision"). If the grievance is sustained, the arbitrator will remove the discipline and the punishment, up to and including directing the City to expunge the incident from the officer's personnel file. If the arbitrator orders expungement, any record of the disciplinary decision and incident that gave rise to discipline are kept on file only at PPD IAD (not in the officer's personnel record). If the punishment resulted in a loss of pay (such as a suspension,

¹ The contract mentions both agencies but does clearly state the process for this external review.

demotion, or dismissal), the arbitrator will award back pay. If the arbitrator decides that some discipline was warranted, but less than what the department did, the grievance will be sustained in part and denied in part. The arbitrator may reverse a dismissal but direct that the grievant receive no or only limited back pay. The arbitrator may also shorten a suspension.

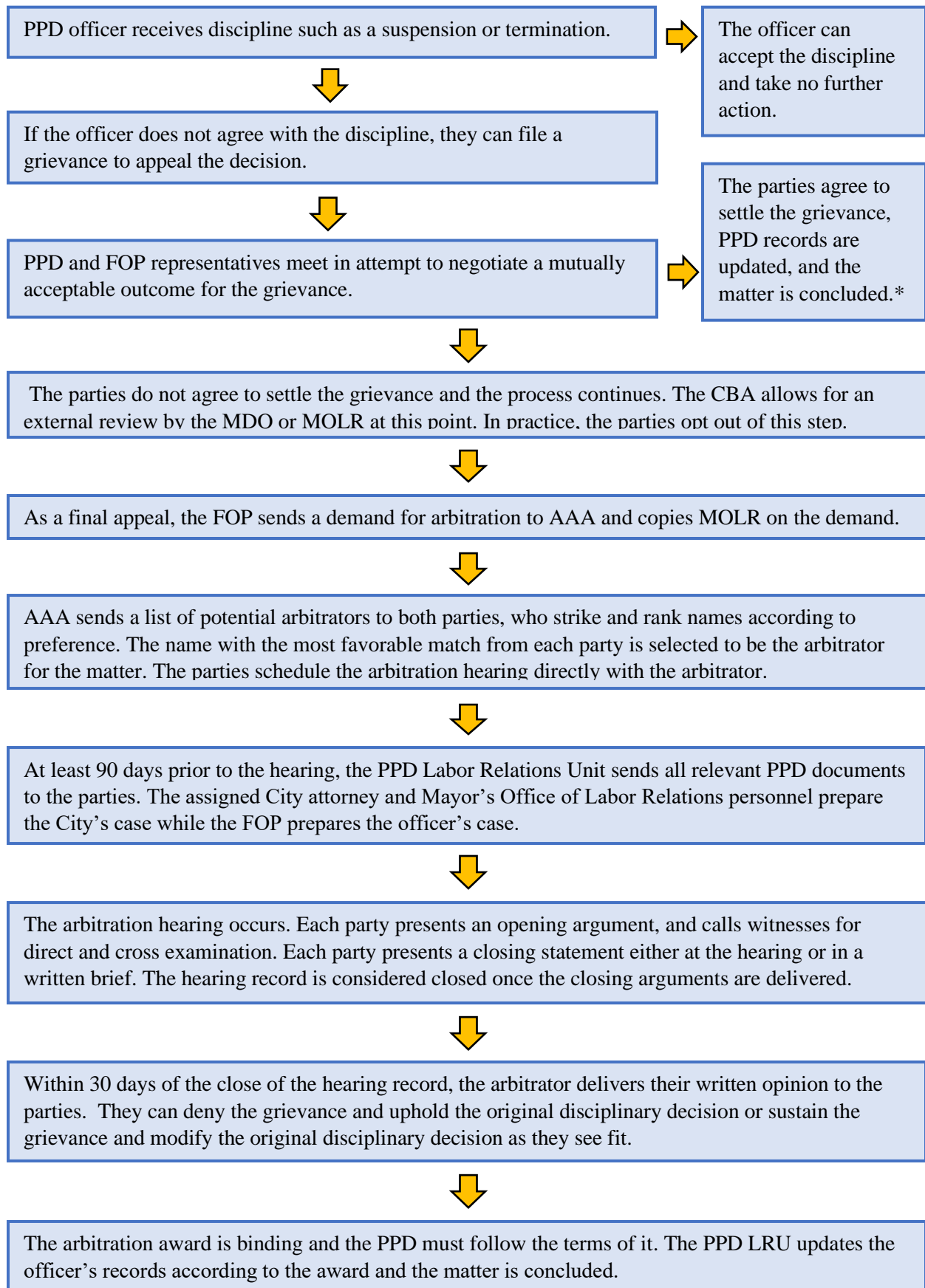
The arbitrator's decision is considered final and binding, and all parties must abide by the arbitration award. In other words, the authority rests solely with the arbitrator, and neither the Police Commissioner, the Mayor, or anyone else can override the arbitration award. An arbitration award can be appealed by either party, but only in very specific circumstances that are not typically applicable to discipline cases, so this type of appeal is very rarely done.

Public Access and Data

To obtain a copy of a discipline grievance arbitration award, a formal Right to Know request must be sent to the City of Philadelphia Law Department. The Mayor's Office of Labor Relations and the Law Department are currently working to have all discipline grievance arbitration awards posted to a publicly available City website. While the completion date for this project is not currently known, they are working to have this project done in the near future. Once this website is complete, all new discipline grievance arbitration awards will be posted as they are received by the City. The awards will be redacted to remove only personal information such as addresses.

The MOLR is also working to have their internal City case management system updated. The current system is outdated and does not allow for MOLR staff to easily aggregate data. For example, it does not allow for data requests, such as a request for the number of discipline grievances that were sustained or denied in recent years, to be easily fulfilled. An updated system will allow for easier access to such data, but this information is not currently available without extensive manual labor.

The following flow chat shows the progress of a discipline grievance through the process to arbitration.



*The parties can agree to settle the grievance and conclude the matter at any point in the process until the arbitration hearing is concluded and the award is issued.